

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-1334-SB of 2004 (O&M)

Date of decision: 31.08.2015

Mohinder Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. L.S. Sidhu, Advocate
for the appellant.

Mr. Mehardeep Singh, DAG, Punjab
for the State.

Jitendra Chauhan, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 15.06.2004, passed by learned Additional Sessions Judge, Ferozepur. The appellant was convicted under Sections 307, 326 and 323 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for six years with fine of Rs.5000/- and in default of payment of fine, to further undergo rigorous imprisonment for 1½ years under Sections 307 IPC. He was further sentenced to undergo rigorous imprisonment for three years with fine of Rs.2000/- and in default of payment of fine, to further undergo rigorous imprisonment for nine months under Section 326 IPC and he was further sentenced to

undergo rigorous imprisonment for six months under Section 323 IPC. All the sentences were ordered to run concurrently.

The case of the prosecution as per para No.2 of the judgment of the Trial Court is as under:-

“On 22.02.2003, on receipt of a ruqa from Misson Hospital, Ferozepur as to admission of Nihalo there, ASI Tarsem Lal along with a police party reached the said hospital for recording statement of Nihalo. He moved an application to the doctor concerned for his opinion as to fitness of injures Nihalo for statement whereupon doctor concerned stated the injured to be fit for statement. Then ASI aforesaid recorded statement of Nihalo in which she disclosed that she was resident of Rukna Mangla and for the last 15 years she was residing at brick kiln of Pardeep at Dakhli Satieye Wala along with her family. She had four children. Her husband was working as Munshi (accountant) in the aforesaid brick kiln. Whenever she used to demand money for household expenses, her husband used to give her beatings. On that day at about 8 a.m., she had gone to the fields to answer the call of nature, her husband followed her on a tractor owned by Pardeep mark Mohindra-255. She was just to enter wheat fields by running when he ran over her the tractor and as a result of that she fell down. Then accused started pelting brick bats on her while she was lying on the ground and as a result of that she sustained injuries on her arms, left eye and thigh besides other parts of the body. HE also broke her teeth. She raised raula “Mar Ditta Mar Ditta” loudly, on hearing which Sadha Singh son of Fazla who was also working on the same brick

kiln along with many other persons came on the spot to save her. On seeing them her husband ran away from that place leaving the tractor there. Sadha Singh aforesaid had seen the whole occurrence with his own eye. Her husband Mithu had intentionally caused injuries to her by running tractor over her and by pelting brick bats on her. Sadha Singh shifted her to Misson Hospital after arranging vehicle where she was medically examined and treated. The statement of Nihalo as aforesaid led to registration of FIR against Mohinder Singh, her husband under Sections 307, 326, 323 IPC which set the law in motion. The Investigating Officer then obtained medico-legal report of the complainant and took up investigation during which he prepared site plan, took into police possession the tractor, blood stained earth and simple earth and recorded the statements of witnesses. Accused was arrested in this case on the next day i.e. 23.02.2003. On completion of investigation, challan was presented before the Illaqa Magistrate under Sections 307, 326 and 323 IPC.”

On presentation of challan, the trial Court finding prima facie evidence against accused-appellant, framed charge for the offences punishable under Sections 307, 326 and 323 of the Indian Penal Code. The accused pleaded 'not guilty' to the charge and claimed trial.

In support of its case, the prosecution examined the following witnesses:-

PW-1, Nihal Kaur, the complainant herself stepped into the witness box and narrated the entire version of her complaint;

PW-2, Sadhu Singh @ Sadha, had stated about the admission of Nihal Kaur in Misson hospital, Ferozepur;

PW-3, Manjit Singh, Halqa Patwari, had proved the scaled site plan Ex.P2 prepared by him;

PW-4, Constable Rajesh Kumar had proved the photographs Ex.P3 to P7 and negatives thereof Ex.P8 to P012 of the place of occurrence;

PW-5, Joginder Kumar, Clerk, proved the ownership of tractor bearing No.HR-24-4507;

PW-6, ASI Tarsem Lal had stated about the recording of statement of Nihal Kaur Ex.P1 on the basis of which FIR against the accused was registered.

PW-7, HC Ashok Kumar testified the mechanical report of tractor bearing No.HR-24-4507, prepared by him.

PW-8, Dr. Ashish Pal who was posted as House Doctor in Farnsis Newton Hospital, Ferozepur Cantt., medically examined the complainant Nihalo and deposed about the injuries suffered by her and proved on record the original MLR Ex.P22.

The statement of the accused under Section 313 Cr.P.C., was recorded. He pleaded innocence and alleged false implication. In defence, the accused had examined DW-1 Pardeep Kumar and

thereafter, closed his defence evidence.

After hearing the Public Prosecutor for the State, the Counsel for the accused, and after going through the evidence on record, the trial Court convicted and sentenced the accused/appellant, as stated hereinbefore.

Feeling aggrieved, against the judgment of conviction and sentence delivered by the trial Court, the instant appeal was filed by the accused/appellant which was admitted on 08.07.2004. His sentence was suspended on 15.12.2004.

Learned counsel for the appellant/accused has contended that the learned trial Court has grossly overlooked the major infirmities of the prosecution while convicting the appellant/accused. He states that there is no cogent evidence on record to prove that the injured/complainant Nihalo suffered injuries at the hands of accused/appellant. He refers to the testimony of PW-2, Sadhu Singh @ Sadha, who in his cross examination had stated that he and accused/appellant worked together throughout the day on the same brick kiln. Accused/appellant had never given beating to Nihalo. At the time of marriage, Nihalo was blind of one eye. He further stated that on the day of occurrence there was fog and on coming to the spot, he asked Nihalo how she suffered injuries to which she replied as a result of being knocked down by something from behind and she fell down with her face downwards on the ground. The learned

counsel has contended that the accused/appellant was not present at the time of occurrence. In fact, the injured Nihalo, wife of accused/appellant was shifted to hospital by accused/appellant Mohinder Singh himself when PW-2, Sadhu Singh had called him. There was no tractor at the spot or marks of the tractor which is duly corroborated by PW-2, Sadhu Singh.

The learned counsel has further argued that as per PW-8, Dr. Ashish Pal, he had found eight injuries on the person of Nihalo at the time of her medico-legal examination on 22.02.2003 and out of eight injuries, one was declared to be grievous in nature. However, in the MLR, it is not specifically indicated that which of the injuries was grievous, therefore, the conviction under Section 307 IPC is not sustainable in the present case. In fact, the present case was registered by the complainant under pressure of her brothers, who had quarreled with the accused/appellant. This fact was duly corroborated by PW-2, Sadha Singh in his cross examination that brothers of Nihalo quarreled with accused/appellant once or twice.

It is further contended that there is no credible evidence against the appellant, rather the facts on record goes to establish the false implication of the accused in the instant case. On the quantum of sentence, he contended that the punishment is on the higher side. The appellant has two daughters and two sons who are of the marriageable age and there is no one to look after them.

On the other hand, learned State counsel contended that the case of the prosecution has been duly proved beyond reasonable doubt. The complainant PW-1, Nihalo has duly supported the prosecution version. Her statement is duly supported and corroborated by medical evidence and the investigation of the present case. The complainant had lost her one eye during childhood and due to the injuries suffered by the present appellant/accused, she lost her eye vision and now, she is totally hapless lady. Therefore, learned State counsel prays for the dismissal of the present appeal.

I have heard learned counsel for the parties and with their able assistance, have gone through the evidence on record minutely and carefully.

The argument raised by learned counsel for the appellant that the complainant Nihalo herself told to PW-2, Sadhu Singh @ Sadha that she suffered injuries of being knocked down by something from behind and she fell down with her face downwards on the ground, is of no consequence in the light of the statement of PW-8, Dr. Ashishpal who medico-legally examined Nihalo wife of Mithu on 22.02.2003 and found the following injuries on her person.

- 1. Abrasion present over right side of face and laceration over lower lip measuring 1 x 1cm.*
- 2. Right eye perforated cornea.*
- 3. Swelling and abrasion over right hand.*
- 4. Punctured wound below right nipple.*
- 5. Laceration measuring 5cm x 1cm deep present below right illac crest.*
- 6. Swelling over left forearm.*

7. Laceration present over parietal region 5cm x 1cm.

8. Abrasion present over anterior chest wall.

A bare perusal of the testimony of PW-1, Nihal Kaur wife of the appellant/accused would reveal that she had specifically stated that the accused/appellant used to give her beatings when she demanded money for running kitchen and for maintenance of children. She had stated that on the fateful day i.e. 22.02.2003, at about 8 a.m., she was out to ease herself. Accused/appellant Mohinder Singh followed her on tractor and fell her down by striking tractor and ran over the tractor on her body due to which her right arm and right leg were broken besides injuries on her left arm and chest. The accused/appellant came down from the tractor and broke her teeth and caused injuries on her eye by throwing stones. The testimony of the complainant PW-1, Nihalo has duly testified the whole prosecution story that how and in what manner, the accused/appellant gave injuries to her. Admittedly, the complainant/injured had lost her left eye since childhood but she had lost her right eye due to the injuries suffered by her, in this incident.

As regards the argument raised by the learned counsel that PW-2, Sadhu Singh @ Sadha had specifically stated that when he reached on the spot, he asked Nihalo how had she suffered injuries to which she replied that she was knocked down by

something from behind and she fell down with her face downwards on the ground. Thereafter, PW-2, called accused Mohinder Singh and his father, and they shifted her to hospital. It is to be noticed that there is no material on record to establish this fact. As per MLR Ex.P22 of the injured, no injury on her back had been proved, therefore, it creates doubt that she was knocked down from behind. Further, as per MLR Ex.P22 or bed head ticket Ex.P25, the presence of accused/appellant Mohinder Singh or his father is not substantiated. The injured/complainant herself testified regarding the incident and specifically named the accused/appellant that he had caused injuries to her. Therefore, it can be safely inferred that PW-2, Sadhu Singh being co-employee of accused/appellant had been won over by the accused.

The complainant, while appearing in the witness box as PW1, has consistently supported the prosecution version. Her statement is duly supported and corroborated by medical evidence. The wife has no strong reason to falsely depose against her husband to falsely implicate him in such a heinous crime. Her statement is trustworthy. The denial of the accused in the statement recorded under Section 313 Cr.P.C. that he had not inflicted injuries on the person of injured/complainant cannot be believed. The injuries cannot be said to be self suffered. The intention of accused/appellant to kill her wife is very much clear.

From the oral as well as documentary evidence, this Court comes to the conclusion that the prosecution has successfully established its case beyond reasonable doubt against the accused/appellant.

Lastly, the learned counsel for the appellant submits that the appellant is a labourer, having two sons and two daughters. The daughters are of marriage age. There is none else to support and look after them. In fact they are stated to be at the verge of starvation. The appellant is facing the agony of trial since the registration of FIR i.e 22.02.2003 and has remained in custody for the last more than 01 year. In the present case, the maximum sentence has been awarded. He prays for taking a lenient view in sentencing the accused.

The fact that the daughters of the appellant/accused are of marriageable age and appellant being the head of the family is the only to look after them is a mitigating circumstance in favour of the appellant, therefore, the conviction of the appellant is upheld but his sentence is reduced from six years to five years under Section 307 IPC. The other sentences shall remain the same. Accordingly, the quantum of sentence is modified to the extent as mentioned above.

There is no illegality or impropriety in the impugned judgment of conviction dated 15.06.2004 and the same, is, hereby upheld and affirmed. There is no merit in the appeal which is hereby dismissed. The appellant is stated to be on bail, his bail bond

is forfeited. The appellant be taken into custody to undergo the remaining part of the sentence. The appeal is dismissed with the modification indicated above.

31.08.2015

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(JITENDRA CHAUHAN)
JUDGE

Whether to be referred to reporter: Yes / No